

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ANTONIO FERNANDEZ §
§
VS. § C.A. NO.: _____
§
SOUTHWESTERN RAILROAD OF NEW §
MEXICO and THE WESTERN GROUP, §
L.C. § PLAINTIFF DEMANDS A
§ TRIAL BY JURY

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO:

COMES NOW ANTONIO FERNANDEZ, hereinafter referred to as 'Plaintiff', complaining of SOUTHWESTERN RAILROAD OF NEW MEXICO and THE WESTERN GROUP, L.C., hereinafter referred to as 'Defendants', and for cause of action would respectfully show unto this Court as follows:

I.
JURISDICTION

1. This action is brought under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq. Therefore, jurisdiction attaches under 28 U.S.C. § 1331.

I.
PARTIES

2. Plaintiff, ANTONIO FERNANDEZ, a person of majority age, resides in El Paso County, Texas.

3. Defendant, SOUTHWESTERN RAILROAD OF NEW MEXICO, is a railroad corporation doing business in the State of New Mexico, but which has not designated an agent for service in New Mexico. This Defendant may be served with due process by serving the Secretary of State for

the State of New Mexico. Defendant's address is 110 East Fox Street, Carlsbad, New Mexico 88220.

4. Defendant, THE WESTERN GROUP, L.C., is a Utah railroad corporation doing business in the State of New Mexico, but which has not designated an agent for service in New Mexico. This Defendant may be served with due process by serving the Secretary of State for the State of New Mexico. Defendant's address is 3662 N 700 E, North Ogden, Utah 84414.

II.
FACTS

5. Plaintiff, ANTONIO FERNANDEZ, would show that this lawsuit has become necessary as a result of personal injuries received on or about September 9, 2015. At all material times, Plaintiff was employed as an engineer by Defendant, SOUTHWESTERN RAILROAD OF NEW MEXICO and/or THE WESTERN GROUP, L.C. At all material times, Defendant, SOUTHWESTERN RAILROAD OF NEW MEXICO, was a common carrier by railroad engaged in interstate commerce, and Plaintiff was employed by the Defendant to further such activities. At all material times, Defendant, THE WESTERN GROUP, L.C. was a common carrier by railroad engaged in interstate commerce, and Plaintiff was employed by the Defendant to further such activities.

6. On or about September 9, 2015, Defendant, SOUTHWESTERN RAILROAD OF NEW MEXICO and/or THE WESTERN GROUP, L.C., ordered its driver to pick up Plaintiff and his fellow crewmembers from their work location in Deming, New Mexico. The driver employed by Defendant, SOUTHWESTERN RAILROAD OF NEW MEXICO and/or THE WESTERN GROUP, L.C., drove the crew on a bumpy, dirt road alongside the track in a negligent and unsafe manner. Plaintiff and his fellow crewmembers advised the driver that she needed to slow down, but the driver refused. As a result of the Defendants' negligence, Plaintiff sustained severe, painful, and

debilitating injuries to his back and other parts of his body.

III.

CAUSE OF ACTION FOR NEGLIGENCE AGAINST DEFENDANTS,
SOUTHWESTERN RAILROAD OF NEW MEXICO and/or THE WESTERN GROUP, L.C.

7. On or about September 9, 2015, Plaintiff, ANTONIO FERNANDEZ, was injured while in the course and scope of his employment with Defendant, SOUTHWESTERN RAILROAD OF NEW MEXICO and/or THE WESTERN GROUP, L.C. On or about September 9, 2015, Defendants, SOUTHWESTERN RAILROAD OF NEW MEXICO and THE WESTERN GROUP, L.C. were negligent, and said negligence was a proximate cause of Plaintiff's injuries. At all relevant times, it was feasible for Defendants to provide to Plaintiff, and Defendants owed to Plaintiff, duties of care to provide, *inter alia*, a safe place to work. Plaintiff contends that on the occasion in question, Defendants, acting through their officers, agents, servants and/or employees, were careless and negligent in the following respects:

- a. In failing to provide a safe place to work;
- b. In failing to provide safe and adequate transportation from its Deming work site;
- c. In failing to properly train and supervise its driver; and,
- d. In failing to heed the warnings from Plaintiff and other employees concerning the conduct of its driver.

8. Said breaches of duty contributed, in whole or in part, to cause Plaintiff to suffer the hereinafter complained of injuries for which Defendants, SOUTHWESTERN RAILROAD OF NEW MEXICO and THE WESTERN GROUP, L.C. are liable to Plaintiff in damages.

IV.
DAMAGES

9. As a direct and proximate result of the occurrence alleged, Plaintiff sustained severe and painful injuries to his body and mind, and shock and injury to his nervous system and person, all of which injuries have caused and continue to cause great physical and emotional pain and suffering. In connection therewith, Plaintiff would show that he has sustained severe pain, physical impairment, discomfort, mental anguish, and distress to date. Plaintiff is informed and believes and alleges that, in all reasonable probability, some or all of said injuries will result in permanent damage, disability, and pain and suffering, causing general damages in an amount to be determined at trial. Moreover, Plaintiff has suffered a loss of earnings in the past, as well as a loss of future earning capacity. Furthermore, he has incurred and will incur pharmaceutical and medical expenses in connection with said injuries. By reason of the foregoing, Plaintiff would show that he has been damaged in a sum, to be determined at trial, far in excess of the minimum jurisdictional limits of this Honorable Court, for which amount he comes now and sues. Plaintiff now seeks and is entitled to recover from Defendants, compensatory damages in the amount of ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS, plus found and fringe benefits.

10. By reason of the foregoing premises and as a legal result thereof, Plaintiff has in the past and/or will in the future be caused to suffer the following described injuries and/or losses, for which Defendants, SOUTHWESTERN RAILROAD OF NEW MEXICO and THE WESTERN GROUP, L.C, are liable to Plaintiff:

- a. Physical and emotional injury, pain and suffering in the past and future;
- b. Prolongation and or aggravation of injuries;
- c. Indebtedness for health care expenses in the past and future;

- d. Indebtedness for daily living expenses;
- e. Loss of earning capacity in the past and in the future, including loss of fringe benefits;
- f. Physical disfigurement in the past and in the future;
- g. Physical impairment in the past and in the future; and,
- h. Prejudgment interest.

All said injuries and damages in an extent, not now precisely known, in excess of \$1,000,000.00.

VI.
JURY DEMAND

11. Plaintiff hereby requests a trial by jury on all issues raised herein.

VII.
PRAYER

12. WHEREFORE PREMISES CONSIDERED, Plaintiff, ANTONIO FERNANDEZ, prays the Defendants, SOUTHWESTERN RAILROAD OF NEW MEXICO and THE WESTERN GROUP, L.C., will be cited to answer and appear and upon final trial hereof, Plaintiff will have judgment against the Defendant, for a sum in excess of the minimum jurisdictional limits of this Court, exclusive of interest and costs; for post-judgment interest; for costs of court, and for all other legal, special, general and/or equitable relief to which he may be entitled, in law and/or in equity.

Respectfully submitted,

JOHN TIWALD, P.C.

/s/ John Tiwald — electronic filing

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